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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

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No. 286

MILLARD NAREHOOD, ET AL., TAXPAYERS OF CLEARFIELD COUNTY,

Petitioners,

vs.

A. W. PEARSON, NELSON O. LEWIS, J. J. SHARKEY, COUNTY COMMISSIONERS OF CLEARFIELD COUNTY, AND ALSO ACTING AS CLEARFIELD COUNTY BOARD OF ASSESSMENT AND REVISION OF TAXES

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above-entitled case on May 25, 1953.

Opinions Below

The two opinions of the Court of Common Pleas of Clearfield County in the above-entitled case (R. 10, 15) are not officially reported.

The opinion of the Supreme Court of Pennsylvania, (R. 41) is reported in 96 A. 2d 895.

Jurisdiction

The judgment of the Supreme Court of Pennsylvania was entered on May 25, 1953 (R. 41). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

Petitioners (over 2,000 United States citizens and Clearfield County taxpayers, hereinafter referred to as plaintiffs) specifically alleged in their original and amended Complaint a violation of their rights under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States in that the formula or mode of assessment employed by the Clearfield County chief assessor (acting within the scope and course of the authority given him by the County Commissioners) necessarily resulted in arbitrary, discriminatory and unequal taxation (R. 4-8, 29-34). Petitioners alleged that the assessment of Clearfield County property was not based on individual values but on a formula whereby the real property in the county was divided into certain classifications (such as surface land, mineral land, farm land) and then a predetermined arbitrary fixed figure per acre was chosen for each of the classifications to represent the "value" per acre of any and all property within that classification, regardless of the actual value thereof (R. 5, 6, 30, 31).

Defendants filed Preliminary Objections alleging, inter alia, that plaintiffs' complaints were merely as to irregularities in the exercise of an admitted power to levy taxes, and therefore the remedy at law (of appeal) was adequate, and that plaintiffs had failed to state they had in any way been harmed by defendants' actions (R. 13).

In dismissing the said Preliminary Objections, the Clearfield County Common Pleas Court stated (R. 16):

"Mere irregularities seeking a reduction of the assess-

ment or claiming that one property is assessed out of proportion with another property, is a matter to be heard exclusively on appeal. The mere fact that some formula may have been used is not fatal; *but if a formula has been applied, so that an examination of the properties was not made to ascertain their value, but the assessment was made upon a formula that would apply throughout the county, then that assessment would be illegal and void and we would restrain any further proceeding thereon.*" . . . .

"If counsel for the plaintiffs can satisfactorily sustain that allegation (that all properties within each of the classifications were assessed at the same arbitrary predetermined fixed 'valuation' per acre) we would issue the injunction."

That Court accordingly held the allegations of plaintiffs' Complaint were sufficient to require defendants to file an Answer and to give plaintiffs an opportunity to sustain their averment that all properties within each of the classifications were assessed at the same arbitrary predetermined fixed "valuation" per acre without regard to the actual value thereof (R. 17).

Defendants then appealed to the Supreme Court of Pennsylvania which reversed the order of the Clearfield County Common Pleas Court on the ground that

> "The fixing by the chief assessor of a reasonable and uniform basic value per acre for surface land, farm land, and mineral land was reasonable and practical . . ." (R. 44).

and

> "It is not unconstitutional to adopt as a base a reasonable and uniform standard of valuation for each property of the same class in a district or proper area, since substantial uniformity in assessments and in the application of the laws satisfies the Constitution . . ." (R. 46).

Thus, the Federal question was presented in plaintiffs' original pleadings, was expressly decided by the lower court in plaintiffs' favor, and on appeal by defendants to the Pennsylvania Supreme Court was expressly decided adversely to plaintiffs.

Question Presented

Whether a mode of assessment of property is unconstitutional and in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution as resulting in arbitrary, discriminatory and unequal taxation, where certain classifications of real property are made, such as surface land, mineral land, farm land, and then a predetermined arbitrary fixed figure per acre is chosen for each of the classifications to represent the value per acre of any and all property within that classification, regardless of the actual value thereof.

Statute Involved

Fourteenth Amendment of the Constitution of the United States—

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The Fourth to Eighth Class County Assessment Law of May 21, 1943, P. L. 571, 72 P. S. 5453.101 *et seq.*, as amended by Act No. 606, 1951-1952, P. L. 2138, providing *inter alia:*

> "It shall be the duty of the chief assessor to assess, rate and value all subjects and objects of local taxation, whether for county, township, town, school (except

in cities), county institution district, poor or borough purposes according to the actual value thereof, and in the case of subjects and objects of local taxation other than real property as such rates and prices for which the same would separately bona fide sell. Real property shall be assessed at a value based upon an established predetermined ratio, of which proper notice shall be given, not exceeding seventy-five per centum (75%) of its actual value or the price for which the same would separately bona fide sell . . ." (Article VII, Section 602, 72 P. S. 5453.602).

" . . . Any person aggrieved by any assessment may appeal to the Board for relief . . ." (Article VII, Section 701 (b), 72 P. S. Supp. 5453.701).

" . . . Any person may appeal and be heard either in person or by counsel. At such hearing, the Board shall inquire as to the equity of the assessment appealed from in relation to other similar assessments, as well as to the proper value of the subject or object assessed, and after hearing shall make such order as to it seems just and equitable, affirming, raising or lowering the assessment appealed from . . ." (Article VII, Section 702, 72 P. S. Supp. 5453.702).

"Any person who shall have appealed to the Board for relief from any assessment, who may feel aggrieved by the Order of the Board in relation to such assessment, may appeal from the Order of the Board to the Court of Common Pleas of the County within which such property is situated, . . . and . . . the Court shall proceed at the earliest convenient time to be by them appointed, . . . to hear the said appeal and the proofs in the case, and to make such Orders and Decrees determining from the evidence submitted at the hearing, what ratio was used generally in the taxing district and the Court shall direct the application of the ratio so found to the value of the property which is the subject matter of the appeal and such shall be the assessment . . ." (Article VII, Section 704, 72 P. S. Supp. 5453.704).

"The Board or any party to the appeal to the Court of Common Pleas, may appeal from the judgment, Or-

der or Decree of the Court of Common Pleas in any matter affecting the assessment to the Supreme or Superior Court, in the same manner as appeals are taken in other cases to the said Supreme or Superior Court . . ." (Article VII, Section 705, 72 P. S. 5453.705).

Statement

Approximately over two thousand United States citizens and Clearfield County property taxpayers (all of whom are Petitioners herein) joined in a Complaint in Equity against the defendants, respondents herein, asking that any further proceedings on the 1953 Clearfield County real property assessment be restrained, and that the said assessment be declared illegal and void (R. 4, 29).

Plaintiffs alleged that the properties within the said County had not been assessed on an ad valorem basis and that their actual value had been in no way considered (R. 6, 30, 31). Plaintiffs alleged that a formula was used whereby certain classifications of real property were made, such as surface land, mineral land, and farm land, and then a predetermined arbitrary fixed figure per acre, such as $10, $20, and $5.00 was chosen for each of the classifications to represent the "value" per acre of any and all properties within that classification, regardless of the actual value thereof. Plaintiffs' complaint alleged as examples of the application of the formula that (1) all mineral land was "valued" at the same predetermined arbitrary fixed sum per acre, regardless of its proximity to market facilities, regardless of the extractability of the minerals, and regardless of other considerations affecting the actual value thereof; (2) that all farm land was "valued" at the same predetermined arbitrary fixed sum per acre regardless of whether it had been cleared or not and regardless of the many other considerations affecting the actual value thereof; and (4) that all lands having buildings located thereon were valued at

the same predetermined arbitrary fixed sum regardless of location, topography, shape, and regardless of the many other considerations affecting their actual value (R. 5, 6, 30, 31).

Plaintiffs contended that this formula or mode of assessment necessarily resulted in arbitrary, discriminatory and unequal taxation contrary to the provisions of the Fourteenth Amendment, since properties of obvious different values were given the same "valuation" (R. 5, 6).

Plaintiffs further alleged that the provisions of the Act of January 18, 1952, which amended the Act of May 21, 1943, known as the Fourth to the Eighth Class County Assessment Law of Pennsylvania, and which provided for assessments at 75% of the actual value of the property, had not been complied with in that the local assessors had not gathered and reported to the chief assessor all data and information necessary to assess, rate and value all subjects or objects of local taxation; the Board of Assessment and Revision of Taxes did not establish a permanent system of records consisting of tax maps, property record cards and property owners' index; and the Chief assessor failed to prepare or cause to be prepared the uniform permanent record system and such other maps, plans, surveys and records as may be deemed necessary to secure a proper and equitable assessment [1] (R. 30-33).

Plaintiffs further alleged that though the Act of January 18, 1952 above referred to appoints the chief assessor as the person to assess, rate and value all subjects and objects of taxation, yet he did not have any data or information reported to him, nor was any recorded to which he could refer and upon which he could base an assessment, nor did he make visits to the properties for the purpose of

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[1] Section 506 (P.L. 2138)—Section 302 (P.L. 2094)—Section 306 (P.L. 2094)—Section 403 (P.L. 2094)—Section 602 (P.L. 2138).

evaluating the same, but, on the contrary, the local assessors fixed a value on the properties according to the formula above set forth, and these "values" were copied in the 1953 County Assessment (R. 32-34).

Defendants filed Preliminary Objections to plaintiffs' Complaint alleging, *inter alia,* that same did not state a cause of action for relief in equity in that plaintiffs complained merely of irregularities in the exercise of an admitted power to tax and therefore the remedy at law (of appeal) was adequate, and further, that plaintiffs had failed to state that they had in any way been harmed by defendants' actions (R. 13).

The Common Pleas Court of Clearfield County dismissed the Objections, however, holding that (R. 16):

> "If a formula has been applied, so that an examination of the properties was not made to ascertain their value, but the assessment was made upon a formula that would apply throughout the county, then that assessment would be illegal and void, and we would restrain any further proceeding thereon."

That court accordingly held that since an injunction would issue if plaintiffs could prove their allegations, the defendants should file an Answer and plaintiffs were entitled to an opportunity to sustain their allegations (R. 17).

On defendants' appeal from the dismissal of its Objections, the Supreme Court of Pennsylvania reversed the lower court and held that (1) the mode of assessment was not unconstitutional; (2) that any inequalities of assessment could be corrected on appeal; (3) that equity could not intervene because (a) the mode of assessment was constitutional, (b) the remedy at law of appeal was adequate, (c) there was no multiplicity of suits that could be avoided by one class action in equity as the interests of each of the taxpayers was distinct and separate and not identical, and

(d) to grant an injunction would result in financial chaos in the County (R. 41-49).

Specifications of Error to Be Urged

The Supreme Court of Pennsylvania erred:

1. In holding that the application of the same predetermined arbitrary fixed "valuation" per acre to all properties within the same classification, without regard to the actual value thereof, did not result in arbitrary, discriminatory and unequal taxation but was a constitutional mode of assessment.

2. In holding as material to the issue of arbitrary, discriminatory and unequal taxation, plaintiffs' failure to allege that their properties were assessed at more than 75% of actual value, and in thus limiting plaintiffs to questioning their own assessments. In failing to hold that discrimination and inequality of taxation, in violation of the Fourteenth Amendment, may result, even though plaintiffs' properties may not have been assessed at more than 75% of the actual value thereof.

3. In failing to hold applicable the decision of this Honorable Court in *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U. S. 23, 76 L. Ed. 146.

4. In holding that inequality of assessments could be corrected on appeal and in failing to hold that an appeal would not be an adequate remedy for the correction of a county-wide unconstitutional mode of assessment whereunder hundreds of properties have been assessed.

5. In holding that the interests of all the plaintiff-taxpayers were separate and distinct and dependent upon proof of the individual values of their properties, so that multiplicity of suits could not be avoided by this class action in equity. In failing to hold that the sole issue was the

constitutionality of the formula or mode of assessment alleged by plaintiffs, and that the determination of that issue was not dependent upon proof of the value of the properties of each of the plaintiffs.

6. In holding that the issuance of an injunction "would create financial chaos in the County and virtually paralyze or effectively prevent the County Government from functioning".

7. In holding as material to the issue of the unconstitutionality of the mode of assessment, and as an excuse for the improper assessment, the fact that "The assessors could not, in a few months, gather all the data and information required for an assessment based on actual values".

8. In reversing the order of the Common Pleas Court of Clearfield County.

Reasons for Granting the Writ

1. The decision of the Supreme Court of Pennsylvania is erroneous and in direct conflict with the decision of this Honorable Court in *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U. S. 23, 76 L. Ed. 146, in which this Honorable Court definitely and clearly held that to give the same fixed "valuation" per acre to all property within a certain classification, without result to actual values, necessarily resulted in inequal taxation in violation of the Fourteenth Amendment.

2. The irreconcilable conflict between the decision of this Honorable Court in the *Cumberland* case, *supra*, and the decision of the Pennsylvania Supreme Court in the instant case, creates complete confusion on an issue of paramount importance to all property owners.

3. If the decision of the Supreme Court of Pennsylvania is to stand, the necessary result would be that assessments

need not have any relation to the actual value of the properties assessed, and that there is "equality" of taxation as long as all properties within the same classification are "valued" at the same pre-determined arbitrary fixed figure per acre regardless of their actual value.

4. Whether one's property can be taxed according to a formula which puts the same arbitrary pre-determined fixed "valuation" on all property within the same classification regardless of its actual value is a question of utmost importance to many, and a clear determination of that issue is plainly in the public interest.

ARGUMENT

I. To Make a Classification of Various Types of Real Property and Then to Apply the Same Predetermined Arbitrary Fixed "Valuation" Per Acre to All Property Within That Classification Regardless of Actual Value Thereof Results in Arbitrary, Discriminatory and Unequal Taxation, and Is Violative of the Fourteenth Amendment of the United States Constitution.

The Supreme Court of Pennsylvania, in holding as constitutional a mode of assessment whereby the same predetermined arbitrary, fixed valuation per acre was given to all property within the same classification, stated (R. 43):

> "It is clear, therefore, that the division or classification of land into surface, mineral, and farm land was not arbitrary or discriminatory or illegal, but was unquestionably reasonable, practical and just, and did not violate any provision of the Federal or State Constitution."

Then realizing that the issue was not the classification of the real property, but the application of the same arbi-

trary predetermined fixed "valuation" to each and every acre within that classification, it added (R. 44):

> "So in this case we hold that the fixing by the chief assessor of a reasonable and uniform basic value per acre for surface land, farm land, and mineral land was reasonable and practical, and since any inequalities could be corrected on appeal, this did not violate the uniformity or any other provision of the Federal or State Constitution."

The Pennsylvania Supreme Court thus chose to beg the question and to assume that the basic value per acre was reasonable, even though there was no such evidence and even though plaintiffs' allegations—that the figure fixed as the "value" was arbitrary and without any relation to the actual value of the property, must, for the purpose of passing upon defendants' preliminary objections, be taken as true.

The Court thus chose to ignore or failed to realize that the necessary result of the formula or mode of assessment alleged by plaintiffs was arbitrary, discriminatory and unequal taxation, for properties of different values are given the same value. It is obvious that in a county containing 45,000 items, there would be countless differences between the items and there would be practically no two parcels of land having the same valuation, especially in Clearfield County which, as the Pennsylvania Supreme Court well knew, is in the Bituminous Coal Field and has a topography varying from mountainous to flat land. Furthermore, it is equally obvious that there would be and are thousands of acres of surface and minerals near market facilities, and thousands of acres of surface and minerals remote from market facilities; that there would be and are dirt roads, macadam roads and concrete roads; that to reach some of the lands, roads would have to be built; that there are steep hillsides, bottom land, and leval high lands;

that there are thousands of acres of coal in the basin of pure streams, and thousands of acres of coal in the basin of polluted streams; that by statute removal of coal from the pure basin is prohibited. The court could well have taken judicial notice of such differences in land parcels, or should have granted plaintiffs the right to prove such facts in support of their allegations in paragraphs 8, 9, 10 and 11 of the Amended Complaint (R. 30-31), and in support of their claim that the application of the formula resulted in arbitrary, discriminatory and unequal taxation (R. 6, 7, 30-34).

It requires no argument to make evident that equality of taxation is impossible where differing parcels are assessed at the same arbitrary predetermined fixed figure per acre. As an example—if there were two pieces of mineral land, and one was located near market facilities and the other was remote from market facilities, and if the same arbitrary predetermined fixed figure per acre was chosen to represent the "value" of each acre in both parcels, then the result is as follows: If the said formula or mode of assessment produces the actual value of the property near the market facilities, then it necessarily puts a greater value than the actual value on the property remote from the market facilities. If the formula produces the actual value of the property remote from the market facilities, then it produces a value less than the actual value on property near the market facilities.

Not only did the Pennsylvania Supreme Court choose to ignore this very obvious result of the application of the formula or mode of assessment alleged by plaintiffs, but it chose to render a decision in direct conflict with the holding of your Honorable Court in *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments in Greene County, Pennsylvania,* 284 U. S. 23, 76 L. Ed. 146, where, as in the instant case, Petitioners assailed the plan of assessment

whereby the County Commissioners of Greene County, Pennsylvania, had "assessed all coal in the same township (except what is termed 'active coal') at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of transportation, or means of transportation, and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene." There, as here, the Pennsylvania Supreme Court upheld as constitutional the said mode of assessment, but your Honorable Court on certiorari reversed that court's action, saying (284 U. S. 23, 26):

> "All the coal in the Pittsburgh or River vein within the limits of this township (Cumberland), except what was described as 'active coal', was assessed by the Commissioners (on the fifty per cent basis) at $260 an acre, despite the fact that the coal along the river, and for a considerable area (much more than 250 acres) around the operating plants, was worth $1,000 an acre."

* * * * * * *

(pp. 29-30):

> ". . . the fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as, for example, an acre) as the property of other owners which has an actual value admittedly higher. Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same. If the Commissioners, in the instant case, had

taken the basis of one hundred per cent, instead of fifty per cent of the assigned values, but had adopted the same method of assessment by which all the coal in a township (aside from active coal) was assessed at the same value an acre, despite well known and important differences in value, the result would have been an undervaluation of similar coal belonging to other owners, which would have brought the case of the petitioners within the principle of the decisions cited. In such case, if the petitioners' property had been valued at one hundred per cent of its actual value, the like property of other owners, having a higher actual value, would in effect have been valued at less than one hundred per cent. The discrimination is essentially the same, and is equally repugnant to constitutional right, when both assessments are made on the basis of fifty per cent of assigned values and differences in actual values are deliberately and systematically disregarded. The undervalued property is in effect valued at less than fifty per cent of its actual value; for example, coal of the same description worth twice as much as that of the Cumberland Coal Company was really valued at twenty-five per cent of its actual value."

Though the Pennsylvania Supreme Court was well aware of this Honorable Court's definite pronouncement that the mode of assessment alleged by plaintiffs was unconstitutional as necessarily resulting in arbitrary, discriminatory and unequal taxation, it chose to ignore its applicability to the instant case with the very weak and unexplained statement that "That case is sound law but does not support taxpayers' position in this case" (R. 46). The intimation is that the law would be different if the question was raised otherwise than by a Complaint in Equity. This is so obviously without merit that the mere attempt to make this feeble distinction shows there was no sound basis for holding your Honorable Court's decision inapplicable to the instant case.

Even prior to your decision in the *Cumberland* case, this Honorable Court, in *Cummings* v. *Bank*, 101 U. S. 157, held that a citizen's rights under the Fourteenth Amendment can be violated by a rule or system of valuation which is designed to operate unequally. In the instant case, the formula or mode of assessment alleged by plaintiffs could only result in unequal taxation, and the Supreme Court of Pennsylvania thus erred in sustaining defendants' preliminary objections and depriving plaintiffs of an opportunity to sustain their allegations.

II. It Was Not Necessary for Plaintiffs to Allege That Their Properties Had Been Assessed at More than 75% of Their Actual Value.

The Supreme Court of Pennsylvania in reversing the lower court stated (R. 43):

> "There was no averment or contention that any property was assessed 'at more than 75% of its actual value', or that it was not 'assessed at a value based upon an established predetermined ratio' as required and restricted by Section 602 of the Act of January 18, 1952, P. L. 2138, supra."

That Court in effect would limit plaintiffs to questioning the correctness of their own assessments and thus it failed to realize or chose to ignore the fact that even though plaintiffs' properties have not been assessed at more than 75% of their actual values, if other properties have been assessed at less than 75% of their actual values there is a violation of plaintiffs' rights under the equal protection clause of the Fourteenth Amendment.

In the *Cumberland* case, *supra*, the Supreme Court of Pennsylvania had also held that since there was no showing that plaintiffs' properties had a lesser value than that placed upon it for assessment purposes plaintiffs had no

cause to complain, and that it mattered not what the other assessments of other properties might be. On certiorari, your Honorable Court definitely held such view to be erroneous and stated (284 U. S. 23, 28-29):

> "It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property. *Sunday Lake Iron Co.* v. *Wakefield,* 247 U. S. 350, 352; *Sioux City Bridge Co.* v. *Dakota County,* 260 U. S. 441, 445; *Raymond* v. *Chicago Union Traction Co.,* 207 U. S. 20, 35, 37; *Chicago Great Western Ry. Co.* v. *Kendall,* 266 U. S. 94, 98, 99. In Sioux City Bridge Co. v. Dakota County, supra (at p. 446), this Court, referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, stated the rule to be as follows: 'This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.' "

In *Railroad & Telephone Cos.* v. *Board of Equalizers of Tennessee,* 85 Fed. 302, the issue was clearly defined and answered as follows:

> "Defendants say the proper interpretation of these terms requires that property shall be assessed at its full value, and that, unless plaintiffs can show that their own property has been in fact assessed at more

than its actual value, it is not open to them to complain that all other property in the state is assessed only at a percentage of its actual value. The contention is that if the assessors have obeyed the constitutional direction, and assessed plaintiffs' property at its full value, it is no just or legal cause of company, and no ground for relief, that other assessors have put a taxable value on other property much less than its actual value. There are, however, two sufficient answers to this contention: Conceding, for the purpose of testing the soundness of this proposition, that the constitutional terms 'according to its value' mean the same thing as 'at its full value,' the contention of the state, then, stated with reference to its effect, is this: That it may assess the property of A. at its full value, in obedience to the constitution, and the property of D. at one-half its value, in violation of the constitution and, when A. complains that the result has been to violate the constitution in respect to the equality provision, the answer is that the objection is not open to A., because he is taxed on no more than the full value of his own property, and that he must pay 50 per cent more on the same actual value than D. Now, it will certainly be admitted that the simple statement of such a proposition suggests its utter untenableness. If decisions may be found which apparently uphold a result such as this, they promulgate a doctrine which cannot be accepted as good law."

Accordingly, it was error for the Pennsylvania Supreme Court to view as material the fact that "there was no averment or contention that any property was assessed 'at more than 75% of its actual value' ". Plaintiffs were attacking the entire assessment system whereby all properties within the same classification were given the same "valuation", thus necessarily causing an overassessment of plaintiffs' property as compared with other properties within the same classification which, though of greater value, were assessed at the same figure.

III. Statutory Appeal Is Not an Adequate Remedy at Law for the Correction of an Unconstitutional Mode of Assessment Resulting in Arbitrary, Discriminatory and Unequal Taxation.

The Pennsylvania Supreme Court's error in limiting plaintiffs to questioning the correctness of their own assessments caused it to fall into the further error of holding that the remedy for the adjustment of the assessments was by appeal (R. 44).

Such holding was based on the false assumption that plaintiffs' complaint was merely as to their own assessments and that an appeal would therefore remedy any "inequalities" or "discrimination" or "illegalities". But as hereinbefore set forth at length, plaintiffs' constitutional rights have been violated even if their property is assessed at 75% of its actual value as long as other properties have by the alleged mode of assessment, been underassessed.

The provisions of the statute creating the remedy by appeal make manifest its inadequacy. The Fourth to Eighth Class County Assessment Law of May 21, 1943, P. L. 571, 72 P. S. 5453.101 *et seq.* as amended by Act No. 606, 1951-1952, P. L. 2138 provides:

> ". . . Any person aggrieved by any assessment may appeal to the Board for relief. . . ." (Article VII, Section 701(b), 72 P. S. Supp. 5453.701).
>
> ". . . Any person may appeal and be heard either in person or by counsel. At such hearing, the Board shall inquire as to the equity of the assessment appealed from in relation to other similar assessments, as well as to the proper value of the subject or object assessed, and after hearing shall make such order as to it seems just and equitable, affirming, raising or lowering the assessment appealed from. . . ." (Article VII, Section 702, 72 P. S. Supp. 5453.702).
>
> "Any person who shall have appealed to the Board for relief from any assessment, who may feel ag-

> grieved by the Order of the Board in relation to such assessment, may appeal from the Order of the Board to the Court of Common Pleas of the county within which such property is situated, . . . and . . . the Court shall proceed at the earliest convenient time to be by them appointed, . . . to hear the said appeal and the proofs in the case, and to make such Orders and Decrees determining from the evidence submitted at the hearing, what ratio was used generally in the taxing district and the Court shall direct the application of the ratio so found to the value of the property which is the subject matter of the appeal and such shall be the assessment. . . ." (Article VII, Section 704, 72 P. S. Supp. 5453.704).

Manifestly, the court review is limited to determining "what ratio was used generally in the taxing district" and directing its application to the value of the property that is the particular subject matter of the appeal. So far as appears, the statute affords no right to reduction in value comporting with the undervaluations resulting from the formula applied to other properties. None of the cases cited by the Supreme Court of Pennsylvania in its opinion affords any basis for indulging the inference that the lower courts or that court would depart from the rule applied by the Pennsylvania Supreme Court in the *Cumberland Coal Co.* case and quoted by this Court (*Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23, 28) as follows:

> ". . . The fifty per cent ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."
>
> • • • • • • •

The result, as held in *Sioux City Bridge* v. *Dakota County*, 260 U. S. 441, 444, "is to deny the injury taxpayer any remedy at all because it is utterly impossible for him by

any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district." It is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of the constitutional requirement cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative. *Iowa Des Moines Bank* v. *Bennett*, 284 U. S. 239, 247; *Hillsborough* v. *Cromwell*, 326 U. S. 620, 623.

The proported ground of decision in the Supreme Court of Pennsylvania that there is an adequate legal remedy is plainly an interwoven federal and state ground and is clearly not an adequate, tenable non-federal ground. The Pennsylvania rule as stated by the court permits resort to equity if there is "an utter disregard of imperative constitutional requirements" (R. 45). The apparent non-federal ground in reality, therefore, turns upon the State Supreme Court's determination that the equal protection clause of the 14th Amendment is, despite the holding of this Court in the *Cumberland Coal* case, not "an imperative constitutional requirement or that the disregard of that requirement implicit in the systematic undervaluation of other properties consequent upon application of the formula is not "utter" enough.

IV. The Sole Issue Was the Constitutionality of the Formula or Mode of Assessment Alleged by Plaintiffs and as the Determination of That Issue Was Not Dependent upon Proof of the Value of the Properties of Each of the Plaintiffs, Multiplicity of Suits Could Be Avoided by the Class Action Instituted by Plaintiffs.

The Supreme Court in its further attempt to oust equity of jurisdiction, failed to recognize that the sole issue was the constitutionality of the mode of assessment alleged by

plaintiffs, which issue could be determined without resort to proof of the individual values of plaintiffs' properties, and erroneously held that (R. 44):

> "If there be discrimination, inequalities or confiscation, the interest of all taxpayers is not identical but separate. Each individual property has a value which may depend upon its location, or market facilities, or transportation facilities, or operational costs, or other special facts; consequently all property owners, even of the same class and in the same district or area, may not have the same identical interests, nor would the same question or questions necessarily be involved in each assessment."

It was that Court's view, therefore, that multiplicity of suits could not be avoided by the class action instituted by plaintiffs.

But as before stated, this holding was based on the completely erroneous assumption that proof of the individual values of each of the plaintiffs' properties would be necessary to sustain their position. Plaintiffs' complaint was that an unconstitutional method of assessment had been employed which necessarily resulted in arbitrary, discriminatory and unequal taxation. To sustain its position, plaintiffs would not have to show the individual values of the 45,000 items in Clearfield County. Quite the contrary, all that would be necessary to sustain plaintiffs' contentions would be the testimony of the assessor that the formula alleged by plaintiffs was used generally and systematically (which testimony could be supported by the assessment records showing that the formula was used generally); that the assesments were not based on actual value; that an assessment based on actual value could not possibly have been made within the time taken by the assessor to prepare the assessment.

Stated otherwise, plaintiff would merely have to present

competent evidence of the use of the alleged formula which would necessarily result in arbitrary, discriminatory and unequal taxation. The effect of such proof would then be to vitiate, without regard to individual land values, *all* assessments made according to the unconstitutional formula.

It is obvious, therefore, that the remedy of appeal is inadequate not only for the reason it could not possibly correct the violation of plaintiffs' constitutional rights (as hereinbefore discussed), but is further inadequate for the reason that plaintiffs, who number over 2,000 would have been required to institute separate appeals, thus needlessly consuming the law court's time and causing an unwarranted delay in the adjudication of plaintiffs' rights which are dependent on the answer to one single issue—the constitutionality of the mode of assessment—which issue could be and should be determined in the present class action.

V. An Injunction Would Not Create "Financial Chaos in the County"

In a further attempt to justify its reversal of the lower court's action, the Pennsylvania Supreme Court stated (R. 45):

> " . . . the strong arm of Equity should not be interposed except for very compelling reasons. Especially is this so where an injunction would create financial chaos in the County and virtually paralyze or effectively prevent the County government from functioning."

This highly dramatic, exaggerated and imaginative account of the effect of the intervention of equity is without any basis in fact.

While the assessors are gathering the necessary data and information requisite to a proper assessment under the January 18, 1952 amendatory act, the 1952 assessment can

still be used: *Quemahoning Co.* v. *Township of Jenner,* 83 Pa. Superior Ct. 577 and *Shenango Furnace Co.* v. *Fairfield Township,* 229 Pa. 357. If the 1952 assessment is not sufficient, they can add a small percentage to the 1952 assessment as was done in *Bradford Twp. Taxpayers Protective Ass'n.* v. *McKean County,* 370 Pa. 468, and in this way the county need not suffer and the taxables would not have their constitutional rights violated.

VI. The Fact That "The Assessors Could Not, in a Few Months, Gather All the Data and Information Required for an Assessment Based on Actual Values" Is No Excuse for an Improper and Unconstitutional Mode of Assessment.

The Supreme Court of Pennsylvania stated (R. 67):

> "Plaintiffs averred that the assessments were illegal because the Board (for the assessment and revision of taxes) did not establish a Permanent Records System as required by Section 306 of the amendatory Act of January 18, 1952, P. L. 2094. Since this Act required the new Permanent Records System to be established within five years from January 18, 1952, this averment or contention of plaintiffs was utterly devoid of merit.
>
> "Plaintiffs also alleged that the assessors did not comply with section 506 of the Act of January 18, 1952, P. L. 2138, which amended the Act of May 21, 1943, known as the Fourth to Eighth Class County Assessment Law, in that they did not gather and report to the chief assessor all data and information necessary to assess, rate and value all subjects or objects of local taxation, namely, 45,000 parcels of real estate; and that the chief assessor failed to take into consideration the value of such property as indicated by the use of cost charts and land values applied on the basis of zones and districts as well as the general adherence

to the established predetermined ratio. It is obvious that the assessors could not, in a few months, gather all the required data and information with respect to 45,000 properties; and similarly, that the required cost charts and land values could not possibly have been obtained in time for the 1953 assessments . . .

"The taxpayers in this suit have failed to realize the time element involved, and the practical situation and difficulties confronting the assessors and the chief assessor under the amendatory Acts. How could the assessors gather and collect all the data and information required, and the chief assessor personally assess in a few months 45,000 properties under and pursuant to the provisions of the Acts of January 18, 1952?"

The Supreme Court of Pennsylvania thus makes the very startling admission that the assessments were not based on actual values and that plaintiff-taxpayers have no cause to complain because the assessor just did not have time to make a constitutional assessment of their properties. This certainly is shocking reasoning!

The Pennsylvania Legislature and the State Supreme Court well knew that it would take several years to view and inspect 45,000 items of property and that is why it was provided that the new system of records be established within five years. Although the assessors had five years' time to make the new assessment, they made a fraudulent assessment in several months. There is no reason why they could not take plenty of time to view and inspect the individual properties, for, as before shown, the county affairs would not be thrown in utter chaos because in the meantime they could add a percentage to the old assessment to take care of present financing without violating the constitutional rights of the taxpayers.

The Pennsylvania Supreme Court was aware that there was no assessment on view or inspection, nor on actual values, but on a formula which necessarily resulted in arbitrary,

discriminatory and unequal taxation, and yet it chose to uphold that unconstitutional mode of assessment because there just wasn't time for the assessors to make a proper assessment. Such a shocking holding certainly has no basis either in law or in logic.

Conclusion

The Pennsylvania Supreme Court recognized that "Equity should intervene only where there is either want of a power to make the assessment or to levy a tax, or the tax is levied without authority of law, or where there is an utter disregard of imperative constitutional requirements" (R. 48-49) but wholly failed to recognize the instant case fell within that rule. Having thus based its Opinion on a completely false premise that the mode of assessment alleged by plaintiffs was not unconstitutional, the entire decision, as hereinbefore noted, was erroneous. In order to sustain its illogical conclusion that the mode of assessment was proper, the court necessarily had to resort to illogical reasoning, thus rendering a decision which is not only erroneous but which sets a dangerous precedent for assessors and courts to follow.

Petitioners, therefore, respectfully pray your Honorable Court to issue a writ of certiorari to the Supreme Court of Pennsylvania to review the judgment rendered by that court in the instant case.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 286

MILLARD NAREHOOD, ET AL., TAXPAYERS OF CLEARFIELD COUNTY, *Petitioners*

v.

A. W. PEARSON, NELSON O. LEWIS, J. J. SHARKEY, COUNTY COMMISSIONERS OF CLEARFIELD COUNTY, ETC.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW.

The opinion of the Supreme Court of Pennsylvania (R. 41) is reported in 374 Pa. 299, and in 96 A. 2d, 895.

The Opinions of the Court of Common Pleas of Clearfield County are not officially reported, but are adequately set forth in the record. (R. 10, 15).

JURISDICTION.

The jurisdiction of this Court, invoked by petitioners under 28 U.S.C. 1257 (3) does not exist.

The only matter before the Supreme Court of Pennsylvania was a matter of state procedure, to wit: whether the equity jurisdiction of the Common Pleas Court could be invoked by the petitioners to invalidate local real estate assessments and to restrain the levy of local taxes based thereon and the collection of such taxes, or whether the petitioners were limited to their statutory remedy under the pertinent Pennsylvania assessment statute, the constitutionality of the assessment statute not having been assailed by petitioners in the State Courts.

Thus, a Federal question of substance has not been presented and this Court is without jurisdiction.

QUESTIONS PRESENTED.

1. Does the decision of a state appellate court as to the extent of the state court's equity jurisdiction present a Federal question of substance reviewable by this court?

2. When a statutory remedy exists, which by later resort to the courts, secures to adverse parties an opportunity to be heard suitable to the occasion, is a litigant denied due process and equal protection of the laws by a decision of a state court holding the statutory remedy to be exclusive?

STATEMENT.

Petitioners, hereinafter called plaintiffs, filed an original and an amended Bill of Complaint, In Equity, in the Common Pleas Court of Clearfield County, Pennsylvania (R. 4, 29), to invalidate the 1953 Clearfield County, Pennsylvania, real estate assessment and to restrain the local taxing authorities from levying any millage or collecting any taxes based upon the said assessment.

The Respondents, County Commissioners of Clearfield County, Pennsylvania, as such, and acting as the Clearfield County Board of Assessment and Revision of Taxes, here-

inafter called Defendants, filed Preliminary Objections to the Bill, attacking the Equity jurisdiction of the Common Pleas Court, as follows:

> "Come now the defendants by Smith, Maine, Whitsett & Lee, Clearfield County Solicitors, and file these Preliminary Objections to the Plaintiffs' Bill of Complaint in the above entitled matter:
>
> Preliminary Objections Raising Question of Jurisdiction, under R.C.P. Rule 1017 (b) (1)
>
> (1). As the plaintiffs, by their Bill of Complaint do not deny the power of the Clearfield County Board of Assessment and Revision of Taxes to revise and equalize the real estate assessment of their properties for the year 1953, but complain merely of alleged irregularities in its exercise of that power, and in the alleged method of assessment, their Bill of Complaint does not state a cause of action within the jurisdiction of a Court of equity.
>
> (2). Equity is without jurisdiction since the plaintiffs have a statutory remedy, which is exclusive, and every question raised by the plaintiffs' Bill of Complaint can be raised on appeal from the Clearfield County Real Estate Assessment, under the appeal provisions contained in section 701-705, both inclusive, of the Fourth to Eighth Class County Assessment Law, of May 21, 1943, P.L. 571, as amended (72 PS 5453.701-5453.705, both inclusive).
>
> Wherefore, defendants pray that their first and second preliminary objections raising a question of jurisdiction be sustained and that the plaintiffs' Bill of Complaint be dismissed for lack of jurisdiction of the cause of action". (R. 13, 14).

The Common Pleas Court overruled the said jurisdicdictional Preliminary Objections and refused to dismiss the Petitioners' Bill of Complaint by judgment of March 23, 1953 (R. 28), from which Defendants appealed to the Supreme Court of Pennsylvania where the matter for determination was exclusively the procedural question as to

whether or not the Bill of Complaint alleged a cause of action within the Equity jurisdiction of the State Courts.

The Supreme Court of Pennsylvania reversed the Common Pleas Court, holding that Equity was without jurisdiction, "that the Defendants Preliminary Objections should have been sustained and the amended Bill of Complaint should have been dismissed", (R. 49), and that Plaintiffs had a statutory remedy, which was exclusive under the appeal provisions of the Fourth to Eighth Class County Assessment Law of May 21, 1943, P.L. 571, 72 PS 5453.101 et seq., as amended by Act No. 606, 1951-52, P.L. 2138 (hereinafter called the Assessment Act).

The constitutionality of the Assessment Act was not assailed in the State Courts, nor did the Plaintiffs allege that the Defendants were without power to assess the property of the Plaintiffs under the provisions of the Assessment Act.

ARGUMENT.

FIRST POINT: A Reviewable Question Has Not Been Presented.

In disposing of the case the Supreme Court of Pennsylvania decided that Equity is without jurisdiction of the subject matter of the case, that preliminary objections attacking the equity jurisdiction of the Court should have been sustained and that the bill of complaint should have been dismissed. (Opinion of the Court, R. 41-49).

Whatever may have been the reasons for the decision, whether the Court had or did not have jurisdiction of the case, was a question exclusively for the judgment of the State Court and is not reviewable here. In *William Smith* v. *James M. Adsit,* 83 U.S. 185, 16 Wall. 185, 21 L. ed. 310, Mr. Justice Strong stated:

> "As we have seen, the bill was dismissed for want of jurisdiction. The judgment of the court respecting the extent of its equitable jurisdiction is, of course, not reviewable here. . . . But whatever may have been the reasons for the decision, whether the court had juris-

diction of the case or not, is a question exclusively for the judgment of the State Court."

SECOND POINT: Petitioners Are Not Denied Due Process or the Equal Protection of the Laws.

The Pennsylvania Supreme Court in this and former cases has broadly construed the scope of the remedial provisions of the assessment statute, as follows:

> "If injustice has resulted from any technical irregularities in the assessments, it can be corrected on appeal . . . each property owner or taxpayer's rights are carefully and adequately protected by a full public hearing on an appeal to the Board, with a further right of appeal to the Court of Common Pleas." (R. 42).
>
> ". . . in this case we hold that the fixing by the chief assessor of a reasonable and uniform basic value per acre for surface land, farm land and mineral land was reasonable and practical, and since any inequalities or discriminations or illegalities could be corrected on appeal, this did not violate the uniformity or any other provision of the Federal or State Constitution." (R. 44).
>
> "If upon appeal by the individuals the court of Common Pleas of such county finds a lack of uniformity or a violation of the statutes, they will be entitled to appropriate legal action . . . However, the remedy is not . . . by a bill in equity." (R. 48)
>
> "What we do decide is that every question presented for our consideration in the case at bar, can be raised on appeal from the revised assessment under the law." (R. 48).

From the foregoing it is clear that any irregularities, inequalities, discriminations or illegalities in the assessment complained of could be corrected through the statutory remedy provided in the Assessment Act. As thus interpreted by the Pennsylvania Supreme Court, petitioners' constitutional objections to the Assessment Act are inapplicable, and such objections are not subject to considera-

tion by the Supreme Court of the United States. All questions of state procedure and of the applicability of the State Statute to the circumstances of the case are foreclosed for the Supreme Court of the United States because it is bound by the decisions of the State Court in matters of interpretation to the same extent as though the meaning fixed by the Court had been expressed in the statute in specific words: *Guaranty Trust Co.* v. *Blodgett,* 287 U.S. 509 at 513, 77 L. ed. 463 at 465, also *Greenough* v. *Tax Assessors,* 331 U.S. 486, 91 L. ed. 1621, *Susquehanna Power Company* v. *State Tax Com.,* 283 U.S. 297, 75 L. ed. 1047.

To support their position, petitioners rely greatly upon the decision in *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments in Greene County, Pa.,* 284 U.S. 23, 76 L. ed. 146 (Petitioners' Reasons for Granting the Writ, p. 10, Argument, p. 13-16, 20). However, petitioners have disregarded the fact that the said case was not an equity case; it involved an appeal by property owners under the Assessment Statute, from a real estate assessment, to the local Board of Revision of Tax Assessments, an appeal from the Board to the Common Pleas Court of Greene County, Pa., an appeal to the Supreme Court of Pennsylvania and, ultimately, an appeal to the Supreme Court of the United States. At no point in the Cumberland Coal Company case was the adequacy of the statutory remedy challenged; indeed, the case demonstrates that the statutory remedy provides a person aggrieved by an unjust real estate assessment, a full and complete opportunity to be heard and an adequate procedure to correct the unjust assessment, wherein the aggrieved person may obtain relief as to matters of discrimination, inequality, illegality, lack of uniformity and any other evil in the assessment of his property. Viewed from the proper perspective it is clear that the Pennsylvania Supreme Court did not decide important questions of local law in conflict with the applicable decisions of this Court.

Petitioners argue that the statutory procedure for appeal is inadequate on the mistaken premise that an aggrieved property owner may appeal under the statute, only with reference to his own assessment and not with reference to the assessment of other property in the taxing district (Petitioners' Argument, p. 19-21). Petitioners cite no decisions of the Pennsylvania Courts to this effect, while the cited words of the Assessment Statute are in direct conflict with such a proposition and specifically state otherwise, viz: —that "Any person aggrieved by ANY assessment may appeal." (Petitioners' quotation of the Statute Involved, p. 4-6, and Petitioners' Argument, p. 19, 20).

The matter was summed up by Justice Moody in *Twining* v. *New Jersey*, 211 U.S. 78, 53 L. ed. 97, where, citing many authorities, he said:

> "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction, . . . and that there shall be notice and opportunity for hearing given the parties . . . Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law established by civilized countries, this court has, up to this time, sustained all state laws, statutory or judicially declared, regulating procedure, evidence, and methods of trial, and held them to be consistent with due process of law."

It is not an indispensable requirement of due process, that every procedure affecting interests in property be exclusively by judicial proceedings. Statutory proceedings affecting property rights, which, by later resort to the courts, secure to adverse parties an opportunity to be heard, suitable to the occasion, do not deny due process. Familiar examples are the decisions and orders of administrative agencies which determine rights subject to a subsequent judicial review. *Anderson National Bank* v. *Luckett*, 321 U.S. 233, 88 L. ed. 692. Such is obviously the case here, where there is full opportunity to be heard by the Board of

Assessment and Revision of Taxes, whose decision is subject to court review.

Furthermore, the equal protection clause does not exact uniformity of procedure. The legislature may classify litigation and, as it did here, provide a particular type of procedure for a particular class of litigation. *Dohaney* v. *Rodgers,* 281 U.S. 362, 74 L. ed. 904.

Certiorari should be denied.

Respectfully submitted,

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